



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 14, 2016

Mr. David Jones
854 North Depot Hill Road
Milltown, Indiana 47145

And

Mr. Gary Robinson
595 Sugar Street
Marengo, Indiana 47140

Re: Formal Complaint 16-FC-112; Alleged Violation of the Open Door Law by the Crawford County Community School Corporation Board of Trustees (Consolidated)

Dear Mr. Jones and Mr. Robinson:

This advisory opinion is in response to your formal complaints alleging the Crawford County Community School Corporation Board of Trustees ("Board") violated the Open Door Law ("ODL"), Indiana Code § 5-14-1.5-1 et. seq. The Board has responded via counsel, Mr. Marcus M. Burgher IV. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 16, 2016.

BACKGROUND

Your complaint dated May 11 alleges the Crawford County Community School Corporation Board of Trustees violated the Open Door Law by failing to post proper notice of an executive session. You also contend the execution session discussed impermissible subject matter.

The Board posted notice of a work session and an executive session for April 18. The work session was open to the public and public comment was permitted. Due to large public interest and a great deal of question, Ms. Traci Kerns, Board President, informed the attendees to return the next day so the Board could address the public's concerns. After the public meeting, the Board went into executive session. The notice for this executive session listed Ind. Code § 5-14-1.5-6.1(b) in its entirety.

On April 19, the public was given a handout with answers to several questions that were received at the April 18 meeting. The Board then voted to close schools in the area without holding an open discussion on the matter. You contend that there was either an unadvertised meeting to discuss the questions from the public or that the executive session was improper because the Board took impermissible action.

On May 23, the Board responded. The Board contends its notices were proper, states no additional meeting took place besides the two on the 18th and one on the 19th and asserts its executive session was proper.

ANALYSIS

It is the intent of the Open Door Law (“ODL”) the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See Indiana Code § 5-14-1.5-1*. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See Indiana Code § 5-14-1.5-3(a)*.

"Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. Ind. Code 5-14-1.5-2(c). "Public business" means "any function upon which the public agency is empowered or authorized to take official action." Ind. Code § 5-14-1.5-2(e). "Official action" is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Ind. Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. Ind. Code § 5-14-1.5-2(d).

Your first allegation is the Board may have received information or made decisions in an executive session in violation of the Open Door Law. Meetings held by the Board must be open to the public, although there are exceptions which allow the Board to deliberate in an executive session. An executive session held to discuss strategy with respect to school consolidation is specifically permitted by Ind. Code § 5-14-1.5-6.1(b)(2)(E). The Board may not, however, make a final decision in an executive session. Ind. Code § 5-14-1.5-6.1(c).

All final decisions must be made in a meeting held before a public body. Furthermore, the ODL does not require a governing body to deliberate prior to a vote being taken. Here, the Board properly made its final decision on the consolidation of the Crawford County Community School Corporation in a public meeting.

You next complain about the notices provided for the meetings. Under Indiana Code § 5-14-1.5-5(a)

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.

Ind. Code § 5-14-1.5-6.1(d) states public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. The subject matter intended to be discussed does fall under the permissible discussion topics for a closed door executive session under the ODL, however, the notice and agenda for the executive session held by the Board was improper on its face because it merely cited the entirety of the Open Door Law instead of citing a specific provision of the law.

On February 10, 2014, I issued an Official Opinion on the issue of notice requirements for an executive session. In the *Opinion of the Public Access Counselor 14-FO-03*, I concluded that a generic notice form listing all possible exceptions for an executive session is a violation of the public's right to be informed on the general proceedings of a public body. Here, the Board appears to use the same generic form for each executive session it holds. This notice is insufficient to satisfy the spirit of the Open Door Law in keeping the public informed.

Notice was not required for the April 19th meeting because the April 19th meeting was a continuation of the April 18th meeting. No change in agenda occurred and the Board still discussed Corporation business. The fact the meeting was not satisfactory to you and did not answer all your questions does not mean the meeting was improper. Ms. Kerns informed the public on the 18th that questions would be answered on the 19th. This satisfies Indiana Code § 5-14-1.5-5(a).

The final complaint is the manner in which the answers to the public questions were considered by the Board. Questions were solicited by the Board on the 18th and answered on the 19th. You are likely correct that the board discussed in its executive session how to respond to the questions, but this discussion is permissible. No final action may be taken at an executive session. Under Indiana Code § “Final action’ means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.” Considering how to respond to questions is not final action and is instead permissible decision making under Indiana Code § 5-14-1.5-6.1(c).

CONCLUSION

Based on the forgoing, it is the opinion of the Public Access Counselor the Crawford County Community School Corporation Board of Trustees violated the Open Door Law by posting improper notice of an executive session.

Regards,



Luke H. Britt
Public Access Counselor

Mr. Marcus M. Burgher IV